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SEC/CORPORATE

SEC Updates to Form PF FAQs

On January 18, the Securities and Exchange Commission's Division of Investment Management updated its Form PF FAQs. Registered investment advisers managing private funds with at least $150 million in private fund assets under management are required to complete and file a Form PF. The new FAQs provide additional guidance on the form regarding both general filing requirements and its specific questions, some of which relate to amendments to the form made pursuant to the 2014 Money Market Fund Reform. The SEC added three FAQs related to general filing information and 13 question-specific FAQs. Additionally, FAQs relating to questions 56 and 57 of the form were removed.

The updated Form PF FAQs are available here.

BROKER-DEALER

MSRB Revises Customer Complaint and Related Recordkeeping Rules

The Securities and Exchange Commission has approved the Municipal Securities Rulemaking Board's (MSRB's) revisions to its customer complaint and related recordkeeping rules. The MSRB has modernized the rules and extended their application to municipal advisors as follows:

- The MSRB extended its customer complaint recordkeeping requirements to all municipal advisors, including non-solicitor and solicitor municipal advisors. In addition, the MSRB amended Rule G-8 to require that municipal dealers and municipal advisors keep a standardized complaint log electronically using product and problem codes tailored for municipal securities. The MSRB also amended Rule G-8 to define "written" complaints to include complaints received electronically by the municipal dealer or municipal advisor.
- The MSRB revised Rule G-10 so that the rule more closely focuses on customer and municipal advisory client education and protection and aligns that rule with the customer education and customer protection rules of other financial regulators. Specifically, each municipal dealer and municipal advisor must provide each new customer or client with specified information upon opening an account and on an annual basis thereafter, including a statement that the municipal dealer or municipal advisor is registered with the SEC and the MSRB, the website address for the MSRB and a statement as to the availability of an investor brochure that is posted on the MSRB's website.
- The MSRB also extended its guidance under Rule G-32 to municipal advisors relating to the electronic delivery and receipt of information.

The amendments will go into effect on October 13. More information is available here.

FINANCIAL MARKETS

FSB Publishes Policy Recommendations Relating to Asset Management Structural Vulnerabilities

On January 12, the Financial Stability Board (FSB) published its policy recommendations (Recommendations) to address risks to global financial stability from structural vulnerabilities associated with asset management activities. The FSB consulted on its proposed recommendations in June 2016, and the FSB has incorporated responses to the consultation addressing specific structural vulnerabilities into the Recommendations. The document sets out 14 final policy recommendations to address the following structural vulnerabilities from asset management activities that could potentially present financial stability risks: (1) liquidity mismatch between fund investments and redemption terms and conditions for open-ended fund units; (2) leverage within investment funds; (3) the operational risks and challenges of asset managers in stressed conditions; and (4) securities lending activities of asset managers and funds.

The FSB states that some of the Recommendations will be operationalized by the International Organization of Securities Commissions (IOSCO). IOSCO is expected to finish its work on liquidity recommendations by the end of 2017, as well as its work on leverage measures before the end of 2018.

The Recommendations are available here.

DERIVATIVES

See "CFTC Staff Grants No-Action Relief From Residual Interest Withdrawal Restrictions" in the CFTC section.

CFTC

CFTC Staff Grants No-Action Relief From Residual Interest Withdrawal Restrictions

On January 26, the Commodity Futures Trading Commission's Division of Swap Dealer and Intermediary Oversight (Division) issued CFTC Letter No. 17-03, in which the Division authorized futures commission merchants (FCMs) that carry cleared swaps customer accounts to withdraw excess residual interest from the cleared swaps customer accounts prior to the time provided in CFTC Rule 22.17(b), subject to the terms and conditions in the letter. As explained by the Division, CFTC Regulation 22.2(f)(6)(iii)(A) requires an FCM, prior to the time of clearing settlement with a derivatives clearing organization (DCO), to maintain residual interest in cleared swaps customer accounts that is equal to, or exceeds, the aggregate amount by which each cleared swaps customer is undermargined. For cleared swaps, this means that an FCM must have funds or investments in the cleared swaps customer accounts to cover the aggregate undermargined amount before the time of settlement with DCOs. Margin payments from the cleared swaps customers are generally thereafter received throughout the day.

As margin payments from cleared swaps customers are received, the sum of the undermargined amount decreases and the FCM's excess residual interest increases. However, CFTC Regulation 22.17(b) prohibits an FCM from making withdrawals from its residual interest in cleared swaps customer accounts prior to preparing its daily cleared swaps segregation calculation as of the close of business the prior business day. For many FCMs, this timing gap results in significant amounts of FCM liquid capital, above the cleared swaps targeted residual interest amount, being held in cleared swaps customer accounts for the duration of the day.

CFTC Letter No. 17-03 permits an FCM to withdraw excess residual interest to the extent that margin payments have been deposited by cleared swaps customers to reduce the undermargined amount in the cleared swaps customer accounts, subject to certain terms and conditions. In particular: (1) an FCM must have robust risk management processes and controls in place to assure that withdrawals will not result in any risk of intraday undersegregation in the cleared swaps customer accounts; (2) an FCM must document its consideration of the impact on cleared swaps segregation of any other disbursements not made for the benefit of cleared swaps customers; and (3) withdrawal may not result in an FCM holding less than 110 percent of its current targeted residual interest balance in cleared swaps customer accounts.

CFTC Letter No. 17-03 is available here.

CFTC Extends Public Comment Period for Regulation AT Supplemental Proposal

On January 26, the Commodity Futures Trading Commission published in the *Federal Register* its decision to extend the public comment period for the supplemental notice of proposed rulemaking for Regulation Automated Trading (Regulation AT) (the Supplement). (For a more complete discussion of the Supplement, see the November 11, 2016 edition of *Corporate & Financial Weekly Digest*.) The Supplement was published in the *Federal Register* on November 25, 2016, with the public comment period closing on January 24. Based on the broad scope of topics addressed in the Supplement, and questions raised during the initial public comment period, the CFTC has decided to continue receiving public comments until May 1.

A copy of the *Federal Register* release is available here.

ANTITRUST

FTC Releases Revised Hart-Scott-Rodino Filing Thresholds for 2017

On January 19, the Federal Trade Commission (FTC) announced the new filing thresholds that will apply to mergers and acquisitions under the Hart-Scott-Rodino (HSR) Antitrust Improvements Act of 1976, as amended (the Act). These new thresholds will go in effect 30 days after publication in the *Federal Register* and will likely be effective by mid-to-late February.

Under the revised notification thresholds, transactions valued above $80.8 million will require HSR notification when they satisfy other requirements of the Act. This threshold is an increase from the current threshold of $78.2 million. The FTC adjusted the filing thresholds for larger transactions as well. The current $156.3 million threshold will be increased to $161.5 million, and the current $781.5 million threshold will be increased to $807.5 million. Under the new thresholds, the filing fee for notifiable transactions valued: (1) above $80.8 million but less than $161.5 million, remains at $45,000; (2) above $161.5 million but less than $807.5 million, remains at $125,000; and (3) above $807.5 million remains at $280,000.

Transactions valued between $80.8 million and $323 million also must satisfy the “size of person” test in addition to the “size of transaction” test for a filing to be required. The FTC also announced new size of person thresholds. Under the new thresholds, one party to the transaction must have net sales or total assets of at least $16.2 million, and another party to the transaction must have net sales or total assets of at least $161.5 million. Transactions valued greater than $323 million under the HSR rules will require a filing regardless of the size of the persons involved.

The FTC’s announcement on the revised thresholds is available here.

UK/BREXIT DEVELOPMENTS

UK Supreme Court Rules That Article 50 Requires an Act of Parliament and Government Publishes Withdrawal Bill

On January 24, the UK Supreme Court issued its judgment in *R (on the application of Miller and Dos Santos) v Secretary of State for Exiting the European Union*—the appeal of the High Court of Justice’s decision of November 3, 2016—on the proper constitutional process that the UK government must follow in submitting notice to the European Council to start the two-year withdrawal negotiations, pursuant to Article 50 of the Treaty on the Functioning of the European Union.

The Supreme Court has followed the earlier decision of the UK High Court by a majority of 8-3, ruling that the UK government cannot use its prerogative powers (historic powers traditionally used to conduct international affairs including making and unmaking international treaties) to trigger Article 50 without an Act of Parliament. A primary rationale for the decision cited by the majority is that the United Kingdom’s departure from the European Union will have a significant effect on the rights of UK citizens under UK domestic law. Furthermore, the Supreme Court unanimously concluded, though for differing reasons, that the government is not required to consult with the devolved assemblies in Scotland, Wales and Northern Ireland prior to triggering Article 50.

Subsequent to the judgment, on January 26, the government published a short bill, known as the “European Union (Notification of Withdrawal) Bill” (Bill), to be debated and ultimately passed as an Act of Parliament. The Bill simply states that the Prime Minister may notify the European Council of the United Kingdom’s intention to withdraw from the European Union, and that it supersedes any provision made by or under the European Communities Act 1972, which gives domestic effect to the treaties of the European Union.

The full judgment and Bill are available here and here.

For more information on the history of the case, see the *Corporate & Financial Weekly Digest* editions of December 2, 2016 and December 9, 2016.

For additional coverage on financial and regulatory news, visit *Bridging the Week*, authored by Katten's Gary DeWaal.

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